

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5720 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

PACKART CORRUGATING DIVISION

Versus

HARIBHAI CHHOTABHAI PATEL

Appearance:

MR KAUSHAL THAKER for Petitioner

None present for Respondent

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 21/09/96

ORAL JUDGEMENT

1. Heard learned counsel for the petitioner. The petitioner filed this writ petition before this court under which the challenge is made to the order annexure 'A' made by the Labour Court, Baroda in Recovery Application No.550 of 1980.

2. In all, 16 workmen of the petitioner filed an application before the Labour Court, Baroda under sec.

33C (2) of the Industrial Disputes Act, 1947 for claiming thereunder the bonus for the year 1978-79. The grievance of the applicants thereunder was that the petitioner have paid 20% bonus in the said year to other employees and workmen, but though the applicants have worked during that year, they have not been paid the bonus. Out of 16 applicants, the settlement has been arrived into between two workmen, namely J.P. Jadav and Shaikhiraao More and the petitioner and hence those two applicants have not pressed that application and the application has been considered by the Labour Court only in respect of 14 workmen.

3. The counsel for the petitioner contended that as per the provisions of sec.9 of the Payment of Bonus Act, 1965, bonus have been denied to the applicants for their riotous and violent behaviour. It is not in dispute that for the alleged riotous and violent behaviour of the applicants, the petitioner has filed a criminal complaint and all the applicants have been acquitted in the criminal case. It has next been contended by the counsel for the petitioner that the applicants have been dismissed from the services after holding an inquiry for their riotous and violent behaviour and the reference though was pending challenging thereunder the dismissal by them, the matter could not have been decided by the Labour court until the said reference is disposed of. I do not find any substance in this contention of the counsel for the petitioner. It is not in dispute that the reference has been disposed of though after the order of the Labour court impugned in this Special Civil Application. In that reference, the matter has been compromised between the applicants and the petitioner. The relevant document of the compromise in the reference has been filed by the counsel for the petitioner. In view of the fact that the petitioner itself has settled the dismissal matter before the reference court, it cannot be said and accepted that the dismissal of those applicants stands on the ground of misconduct of riotous and violent behaviour. It is true that on this misconduct they have been dismissed from the services, but the petitioner instead of taking the decision on merits i.e. regarding the validity, legality and propriety of the dismissal of the applicants, had chosen a path to compromise the matter. In compromise, as counsel for the petitioner admitted the applicants therein given up their right of reinstatement in lieu of the amount settled and agreed to be paid by the petitioner. So the result of the compromise is that the petitioner has also accepted that the dismissal of the applicants was not correct. In view of the fact, the

ground which has been taken by the petitioners' counsel that until reference is disposed of the present matter could not have been decided by the Labour Court, is not tenable. Having gone through the provisions of sec.9 of the Act, 1965 coupled with the fact that the applicants have been acquitted in the criminal case of the charges of riotous and violent behaviour and further fact that the dismissal of these applicants made on the aforesaid ground has also been compromised in the Reference court by the petitioner, the denial of the bonus to the applicants for the year 1978-79 was arbitrary and unjustified. Lastly, the counsel for the petitioner contended that the applicants have settled this dispute in the settlement made before the Reference Court. The counsel for the petitioner fairly conceded that the specific reference in the settlement of the dispute which is pending before this Court i.e. the claim of bonus by the applicants for the year 1978-79 is not there. The counsel for the petitioner contended that by necessary implication, an inference does fall from the settlement that this issue has also been settled by the applicants therein. I do not find any substance in this contention also. The petitioner was a party to the settlement. This Special Civil Application is filed by the petitioner. The Labour Court has decided the claim of the applicants of the bonus for the year 1978-79 which is challenged in this Special Civil Application and this Special Civil Application was pending on the date on which the settlement has arrived into by the petitioner and the applicants in the Reference Court. In case, this matter would have been settled also by the applicants or the petitioner has settled this matter with applicants as they have agreed for the same then there should have been a specific reference of this in the settlement, which not the case. In case, the contention of the counsel for the petitioner is accepted, then what this Court has to do to read something in the settlement which the parties were not intending. One more important fact has to be taken into consideration. This settlement is of 21st December, 1983, In case in that settlement, the dispute regarding the claim of the applicants of the bonus for the year 1978-79 would have been also settled then the petitioner should have moved an application before this court and this writ petition could have been got decided in terms of the settlement. Normally, in the case where the settlement has been arrived into in respect of a claim which is pending before this court in Special Civil Application then a specific reference should have been there in the settlement for its disposal in accordance with the terms thereof. This is yet another fact which goes against the petitioner. The fact that there is no

specific reference of the claim of this Special Civil Application in the settlement and this settlement has not been produced by the petitioner before this court at any time earlier to 21st September, 1996, it is difficult to accept the contention of the counsel for the petitioner that under the said settlement this claim has also been settled by the parties.

4. I do not find any substance in this Special Civil Application. This Special Civil Application is dismissed. Rule discharged. No order as to costs.

zgs/-